IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7.11.2007

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1155 of 2007

Sathishkumar .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Secretariat, Chennai-9.

2. The District Magistrate
and District Collector
Vellore District, Vellore. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.E.Kannadasan

For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

O R D E R
(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against Radha, mother of the petitioner, as the said authority arrived at the subjective satisfaction that the said detenue is a Bootlegger and she has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2.1. The order of detention dated 27.7.2007 came to be passed by the second respondent on the basis of the ground case said to have taken place on 1.7.2007 at about 8.30 a.m., when the police party were watching out

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for prohibition offences at Manthoppu Vattam, Kothur on information, they found the detenue pouring some liquid into a plastic tumbler, giving it to a person who was standing and receiving something from that person. On seeing the police party, the person who was consuming from the tumbler escaped. The Sub Inspector of Police caught hold of the detenue and found that she was in possession of 105 Litres of arrack in a mud pot with some poisonous odour. The detenue was arrested. A case was registered in Crime No.427 of 2007 on the file of Natrampalli Police Station for the offences punishable under Sections 4(1)(i)(aaa) and 4(1-A)(ii) of the Tamil Nadu Prohibition Act. On chemical analysis, the Scientific Officer and Assistant Chemical Examiner to the Government, Regional Forensic Science Laboratory, Vellore in his report stated that the arrack is mixed with 6.7 mg. of atrophine per 100 ml. arrack and the same is a poisonous substance.

2.2. Apart from the above, the detaining authority also took note of the eight adverse cases pending against the detenue, viz., Crime Nos.220, 329 and 517 of 2005, 105, 568 and 714 of 2006 and 45 and 216 of 2007 all registered on the file of Natrampalli Police Station for the offences punishable under Sections 4(1)(aaa), 4(1)(i), 4(1-A)(ii) and 4(1)(aa) of the Tamil Nadu Prohibition Act.

2.3. The detaining authority, having satisfied that the detenue is indulging in activities which are prejudicial to maintenance of public order and public health, passed the impugned order.

3. Challenging the said detention, the son of the detenue has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records in connection with the order of detention passed by the second respondent dated 27.7.2007 in her office Ref.No.C3.D.O.No.60 of 2007 against the detenue, now confined at Special Prison for Women, Vellore, Vellore District, to set aside the same and to direct the respondents to produce the detenue before this Court and to set her at liberty.

4. Heard Mr.E.Kannadasan, learned counsel for the petitioner and Mr.M.Babu Muthu Meeran, learned Additional Public Prosecutor for the respondents.

5. The only contention advanced by the learned counsel for the petitioner is that there is considerable delay in considering the representation and the same has rendered the detention illegal.

6.1. Before delving into the issue relating to the delay as contended above, it would be apt to refer the law on the point.

6.2. Article 22(5) of the Constitution of India suggests that the obligation of the government is to offer the detenu an opportunity of making a representation against the order, before it is confirmed

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according to the procedure laid down under the relevant provisions of law, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

6.3. The right to representation under Article 22(5) of the Constitution of India includes right to expeditious disposal by the State Government. Expedition is the rule and delay defeats mandate of Article 22 (5) of the Constitution of India, vide Ram Sukrya Mhatre v. R.D. Tyagi, 1992 Supp (3) SCC 65.

6.4. Any inordinate and unexplained delay on the part of the Government in considering the representation renders the detention illegal, vide Tara Chand v. State of Rajasthan, (1980) 2 SCC 321 and Raghavendra Singh v. Supdt., Distt. Jail, (1986) 1 SCC 650.

6.5. It is a constitutional obligation of the Government to consider the representation forwarded by the detenu without any delay. Though no period is prescribed by Article 22 of the Constitution for the decision to be taken on the representation, the words "as soon as may be" in clause (5) of Article 22 convey the message that the representation should be considered and disposed of at the earliest. But that does not mean that the authority is pre-empted from explaining any delay which would have occasioned in the disposal of the representation. The court can certainly consider whether the delay was occasioned due to permissible reasons or unavoidable causes. If delay was caused on account of any indifference or lapse in considering the representation, such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing of the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned. Even the reason that the Minister was on tour and hence there was a delay of five days in disposing of the representation was rejected by the Apex Court holding that when the liberty of a citizen guaranteed under Article 21 of the Constitution of India is involved, the absence of the Minister at head quarters is not sufficient to justify the delay, since the file could be reached the Minister with utmost promptitude in cases involving the vitally important fundamental right of a citizen, vide Rajammal v. State of T.N., (1999) 1 SCC 417.

7. In the instant case, the impugned order of detention came to be passed on 27.7.2007. A representation was made to the Government on 7.8.2007 and the same was received by it on 8.8.2007, however remarks were called for from the detaining authority only on 13.8.2007. After obtaining the remarks of the Sponsoring Authority, the detaining authority sent a report to the Government on 21.8.2007 and the same was received by the Government on 22.8.2007. However, the file was submitted for consideration of the Officers only on 29.8.2007, i.e., after a delay of seven days. The Under Secretary, the Additional Secretary and the Hon'ble Minister (P.W.D. and Law) considered the file on 30.8.2007, but the

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rejection letter was prepared only on 6.9.2007, i.e., after a delay of seven days. Even though 25.8.2007, 26.8.2007, 1.9.2007 and 2.9.2007 happen to be public holidays, still a delay of 5 days exists at the two stages indicated above. This delay was highlighted by the learned counsel for the petitioner. There is no convincing reply on behalf of the State for the said delay. We find some force as well as substance in this contention. We fail to understand as to why the matter was delayed for five days (excluding public holidays) at two stages. There is absolutely no explanation for this delay.

8. At this juncture, a reference to the decision of the Apex Court in Kundanbhai Dulabhai Sheikh v District Magistrate, Ahmedabad, (1996) 3 SCC 194 is apposite:

> "In spite of law laid down above by this Court repeatedly over the past three decades, the Executive, namely, the State Government and its officers continue to behave in their old, lethargic fashion and like all other files rusting in the Secretariat for various reasons including red-tapism, the representation made by a person deprived of his liberty, continue to be dealt with in the same fashion. The Government and its officers will not give up their habit of maintaining a consistent attitude of lethargy. So also, this Court will not hesitate in quashing the order of detention to restore the 'liberty and freedom' to the person whose detention is allowed to become bad by the Government itself on account of his representation not being disposed of at the earliest."

9. That apart, it is a settled law that there should not be supine indifference, slackness or callous attitude in considering the representation. Any unexplained delay in the disposal of representation would be a breach of the constitutional imperative and it would render the continued detention impermissible and illegal, vide K.M. Abdulla Kunhi v. Union of India, (1991) 1 SCC 476 .

The delay of five days on two occasions which stands unexplained would fatalise the detention attracting Article 22 of the Constitution of India and therefore, the petition must succeed and the same is ordered as prayed for. The detention order dated 24.4.2007 is set aside. The detenue is directed to be set at liberty forthwith unless her custody is required in connection with any other case.

sasi

Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To:

1. The Secretary to Government
   State of Tamilnadu
   Prohibition and Excise Department
   Fort St.George, Chennai - 9.

2. The District Magistrate
   and District Collector
   Vellore District, Vellore.

3. The Joint Secretary to Government,
   Public (Law & Order) Department,
   Fort Saint George, Chennai-9.

4. The Public Prosecutor
   High Court, Madras.

5. The Superintendent,
   Special prison for Women, Vellore,
   Vellore District.

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